



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Johnny Sinclair, Ward 3
Irvan A. "Van" Pearlberg, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, April 11, 2012

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor

Present: Annette Lewis, Grif Chalfant, Johnny Sinclair, Van Pearlberg,
Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Also Present:

William F. Bruton, Jr. City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:08 p.m.

INVOCATION:

Council member Coleman called upon Police Chief Dan Flynn to give the invocation.

PLEDGE OF ALLEGIANCE:

Mayor Tumlin asked everyone to remain standing for the pledge of allegiance.

PRESENTATIONS:

20120220

Service Award - John J. Schupp

Presentation of a Service Award to John J. Schupp for his dedication and service on the Marietta Redevelopment Corporation Board of Directors.

Presented

20120136

Distinguished Service Award - Warren Herron

Presentation of a Distinguished Service Award for Warren Herron, Ethics Committee.

Presented

20120137 Distinguished Service Award - The Reverend James Speed, Jr.

Presentation of a Distinguished Service Award for The Reverend James Speed, Jr., Ethics Committee.

Presented

20120319 Distinguished Budget Presentation Award

Presentation of the Distinguished Budget Presentation Award to Lori Duncan, Budget Manager and Sam Lady, Finance Director for their presentation of the Fiscal Year 2012 Budget Book. The award is the highest form of recognition in governmental budgeting and represents a significant achievement by the city.

Presented

20120317 Keep Marietta Beautiful Community Garden

Presentation of a check from Waste Management to Joan Ellars on behalf of Keep Marietta Beautiful and Jo-Evelyn Morris for a Community Garden located at Allgood School.

Presented

PROCLAMATIONS:

20120330 Proclamation - Miss Mamie's

Proclamation presented to Miss Mamie's by Mayor Tumlin to recognize their winning the Food Network Cupcake Wars competition.

Presented

20120331 Proclamation - Van Pearlberg

Mayor Tumlin recognizes Van Pearlberg for his service to Ward 4 residents of Marietta.

Council member Pearlberg thanked the Mayor the recognition and the Ward 4 residents for allowing him the opportunity to serve. Council member Pearlberg then rendered his resignation from office effective April 20, 2012.

Presented

**ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE
MAYOR, COUNCIL AND/OR CITY MANAGER:**

SCHEDULED APPEARANCES:

20120320 The Reverend Lionel Gantt, Cobb SCLC

The Reverend Lionel Gantt of Cobb SCLC wishes to speak about Fort Hill.

Present

UNSCHEDULED APPEARANCES:

Mr. James Gober, who resides at 4770 Govanett Rd SW, Powder Springs, expressed concern regarding the application to demolish the Fort Hill homes.

Reverend Lionel Gantt presented a brief power point presentation regarding the creation of a Citizen Review Panel.

CONSENT AGENDA: Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Pro tem, Grif Chalfant, called upon Council member Johnny Sinclair, to preside over this portion of the meeting. Council member Sinclair briefly explained the consent agenda process. The following amendments were made to the consent agenda:

-under Public Works: The following disclosure was added to agenda item 20120250, "Council member Goldstein has previously disclosed that he, family members and/or an entity that he owns, owns property in the downtown area and on Waverly Way. This project may go through some of that property; therefore, Council member Goldstein abstains on and will not participate on this item."

-under Public Works: Agenda item 20120251 was added to the consent agenda as a motion to refer back to the Public Works Committee.

-under Other Business: Agenda item 20120142 was added to the consent agenda as a motion to table the matter.

City Attorney Douglas Haynie noted that there were no items on the consent agenda requiring a public hearing.

A motion was made by Council member King, seconded by Council member Coleman, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 7 - 0 - 0 *Approved*
with the following exceptions:

Council member Coleman voting against agenda item 20120190.

Council member Goldstein abstaining on agenda items 20120250 and 20120325.

MINUTES:*** 20120243 Regular Meeting - March 7, 2012**

Review and approve the March 7, 2012 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

*** 20120265 Special Meeting - March 14, 2012**

Review and approval of the March 14, 2012 special meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

*** 20120316 Special Meeting - March 26, 2012**

Review and approval of the March 26, 2012 special meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

MAYOR'S APPOINTMENTS:*** 20120338 Appointment of Vice Chairs to serve on committees for the remainder of 2012**

Appointment of Council Member Grif Chalfant to serve as Vice Chair for the Public Works Committee.

Appointment of Council Member Jim King to serve as Vice Chair for the Judicial Legislative Committee.

Appointment of Council Member Annette Lewis to serve as Vice Chair for the Parks, Recreation and Tourism Committee.

Appointment of Council Member Johnny Sinclair to serve as Vice Chair for the Public Safety Committee.

Appointment of Council Member Philip Goldstein to serve as Vice Chair for the Personnel and Insurance Committee.

Appointment of Council Member Anthony Coleman to serve as Vice Chair for the Economic and Community Development Committee.

Appointment of Council Member Jim King to serve as Vice Chair for the Finance and Investments Committee.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

CITY COUNCIL APPOINTMENTS:*** 20120314 Board of Zoning Appeals Appointment**

Reappointment of G. Marshall Dye Ward 4 to the Board of Zoning Appeals for 3-year terms, expiring April 10, 2015.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

*** 20120315 Ethics Committee Council Appointment**

Motion to extend the term of The Rev. James O. Speed as the Council appointment to the Ethics Committee until such time as a successor appointment can be made.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

ORDINANCES:**RESOLUTIONS:****CITY ATTORNEY'S REPORT:***** 20120336 Denial of Claim**

Denial of the claim of James Linton.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved to Deny Claim

*** 20120340 Denial of Claim**

Denial of claim of Wolfgang Hoddow.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved to Deny Claim

CITY MANAGER'S REPORT:**MAYOR'S REPORT:****COMMITTEE REPORTS:**

1. Economic/Community Development: Grif Chalfant, Chairperson*** 20120173 HOME Reallocation for MHA Henderson Arms Project**

Approval of a Resolution authorizing the reallocation of \$500,000 in FY'07, FY'08 and FY'10 HOME program funds to the Cole Street Development Corporation as a loan for the Henderson Arms Renovation Project.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

2. Finance/Investment: Annette Lewis, Chairperson*** 20120201 Horace Orr Post 29 \$3,000 donation**

[Ord 7580](#)

Approval of an Ordinance amending the Fiscal Year 2012 General Fund budget to receive and appropriate a donation from American Legion for \$3,000 for fire prevention programs.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

3. Judicial/Legislative: Philip M. Goldstein, Chairperson*** 20120190 Revisions to Ordinance 8-8 Alcoholic Beverages**

[Ord 7578](#)

Approval of an Ordinance amending the Marietta City Code Chapter 8-8 Alcoholic Beverages, related to the sale of spirituous liquor from the drive-thru window.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0 Approved
Voting Against: Rev. Anthony Coleman

*** 20120239 Taxi Inspection Ordinance**

[Ord 7582](#)

Approval of proposed revisions to City Ordinance 8-12-18-130, "Maintenance and Inspection of Vehicles."

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

* **20120267 Proposed Revisions to the Sign Ordinance**

CA2012-02 [CODE AMENDMENT] Proposal to amend the Comprehensive Development Code of the City of Marietta, Division 714.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20120268 Revised Detailed Plan for Riverstone Church located at 2005 Stilesboro Road**

Motion to approve the revised Detailed Plan for Riverstone Church to allow the operation of Gracepoint School until June 30, 2013 for no more than 30 students; said property being located in Land Lot 252, District 20, Parcel 304, 2nd Section, Marietta, Cobb County, Georgia and being known as 2005 Stilesboro Road.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson

5. Personnel/Insurance: Van Pearlberg, Chairperson

6. Public Safety Committee: Anthony Coleman, Chairperson

* **20120242 Standard Operating Procedure**

Motion approving revisions to the Police Department Standard Operating Procedures A030 Code of Conduct, A035 Salary Augmentation, A039 Personnel Selection, A047 Internal Affairs, A078 Transfers, A081 Transitional Duty, P010 Patrol Operations, P020 Missing Persons, P042 Roadblocks, and S033 Informants.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

7. Public Works Committee: Jim King, Chairperson

* **20120250 2005 SPLOST Funds Reallocation**

Approval of the reallocation of 2005 SPLOST funds to account for reduced revenue. Projected reductions for the reduced revenue would come from the bridge rehabilitation, sidewalk, multi-use trail, and general streets and drainage, which would postpone projects currently designed. Balancing out the remaining projects, a reduction of \$420,545 on the Roswell Street Barnes to Victory project

would allow the project to retain \$229,538 as potential matching funds for federal funding. The remaining 2005 SPLOST project funding would be balanced within the accounts to construct all remaining projects at the current scope.

Council member Goldstein has previously disclosed that he, family members and/or an entity that he owns, owns property in the downtown area and on Waverly Way. This project may go through some of that property; therefore, Council member Goldstein abstains on and will not participate on this item.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 1 Approved

Abstaining: Philip M. Goldstein

* **20120325**

2005 SPLOST Project Fund

[Ord 7581](#)

Ordinance approving an amendment to the Fiscal Year 2012 budget to reduce and reallocate the funding for the 2005 SPLOST Project Fund.

Council member Goldstein has previously disclosed that he, family members and/or an entity that he owns, owns property in the downtown area and on Waverly Way. This project may go through some of that property; therefore, Council member Goldstein abstains on and will not participate on this item.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 1 Approved

Abstaining: Philip M. Goldstein

* **20120251**

Traffic Calming

Motion approving revisions to the traffic calming policy.

Motion to refer this matter back to the Public Works Committee.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Referred to the Public Works Committee

* **20120252**

980 Roswell Street

Motion to amend Lease Agreement with Amigo and Friends Used Cars.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20120253 Access to GDOT Regional Traffic Server**

Motion authorizing Public Works staff to sign the Non-Disclosure/Confidentiality of sensitive Information Agreement prepared by GDOT to access the Regional Transportation System via Virtual Private Network.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20120261 North Marietta Parkway Gateway Grant**

Motion to approve the GATEway Grant Memorandum of Agreement between The Georgia Department of Transportation and The City of Marietta for Gateway Landscape Improvements for the intersection of North Marietta Parkway and Cobb Parkway.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20120326 Gateway Landscape Improvements Grant- Budget Amendment**

[Ord 7579](#)

Ordinance approving an amendment to the Fiscal Year 2012 budget to appropriate a grant from the Georgia Department of Transportation for Gateway Landscape Improvements for the intersection of North Marietta Parkway and Cobb Parkway.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

Council member Goldstein left the dais prior to the discussion of the next item.

20120283 Donation of Right of Way

Motion approving an Agreement to gift property for right of way by PMG 358 Roswell Street, LLC. to the City of Marietta as requested by Chairman King.

Councilman Philip M. Goldstein will abstain from the discussion and vote on this Agreement in the capacity as a Marietta City Councilman. Philip M. Goldstein is the owner of the entity known as PMG 358 Roswell Street, LLC. and is its manager. This item deals with an Agreement to gift property for right of way by PMG 358 Roswell Street, LLC. to the City of Marietta.

Discussion was held regarding language in the agreement which would donate the right of way property by PMG 358 Roswell Street, LLC to the City. Discussion was also held regarding the deed where the City received property from Emerson Development rather than Emerson, LLC, which may be the legal name.

During a previous meeting, the City Attorney was asked to contact the trustee in the Bankruptcy Court to request execution of a corrective right of way deed from Emerson, LLC. This, in the City Attorney's opinion, would be one solution to the scrivener's error regarding the deed.

Further discussion was held, at which time Mayor Tumlin submitted several documents for the record. The documents attached include: a motion approved by City Council March 15, 2007 showing the intent of Council to receive property from Emerson, LLC; a letter from Mr. D. Roger DeBoy dated March 14, 2007 regarding the same; and an email from Mr. Goldstein to Mr. Jeffrey K. Kerr, Trustee regarding the request to execute a corrective right of way deed from Emerson, LLC. The email was sent April 10, 2012, prior to Mr. Kerr receiving the request from the City Attorney.

After Mr. Goldstein spoke before Council, there was a general consensus that this matter be referred back to the Public Works Committee. The City Attorney was again directed to contact the trustee in the Bankruptcy Court to request execution of a corrective right of way deed from Emerson, LLC. The City Attorney was also directed draft the best possible agreement for Council consideration.

Referred to the PUBLIC WORKS COMMITTEE

Council member Goldstein returned to the dais.

APPEARANCES:

OTHER BUSINESS:

20120140 V2012-10 BRE/ESA Properties, L.L.C. (a/k/a Extended Stay America, Inc.)

V2012-10 [VARIANCE] BRE/ESA Properties L.L.C. (a/k/a Extended Stay America, Inc.) requests variances for property located in Land Lot 10010, District 16, Parcel 0020 and being known as 1051 Canton Road. Variance to allow a pylon sign; variance to increase the sign height from 15 ft. to 35 ft.; variance to increase the sign face from 90 sf. to 120 sf.; variance to reduce parking spaces from 182 parking spaces to 136 parking spaces. Further, the sign in the northeast corner of the property, and identified on the site plan signed by the applicant, shall be removed prior to receiving sign permit approval for the pylon sign to be moved to its new location. Ward 5

Development Services Director Brian Binzer presented information regarding the variance request for property being known as 1051 Canton Road. Mr. Binzer mentioned that this matter was tabled from the last meeting and summarized the criteria for which variance requests should be considered.

Harold Buckley with Alston and Bird, LLP, representing Extended Stay American, spoke regarding the location of the free standing signs on the property and the elimination of one of the signs.

Discussion was held.

Motion to approve the following variances for property located at 1051 Canton Road: variance to allow a pylon sign; variance to increase the sign height from 15 ft. to 35 ft.; variance to increase the sign face from 90 sf. to 120 sf.; variance to reduce parking spaces from 182 parking spaces to 136 parking spaces. Further, the sign in the northeast corner of the property, and identified on the site plan signed by the applicant, shall be removed prior to receiving sign permit approval for the pylon sign to be moved to its new location.

The motion was made by Council member Coleman, seconded by Council member King, that this matter be Approved as Stipulated. The motion carried by the following vote:

Vote: 7 - 0 - 0

Approved as Stipulated

20120141

V2012-11 Roy W. Mertz 2265 Kingston Court

V2012-11 [VARIANCE] ROY W. MERTZ request variance for property located in Land Lot 07260, District 17, Parcel 0010 and being known as 2265 Kingston Court. Variance to allow abandoned signs to remain. Ward 7.

Council member Chalfant disclosed that he has employed the engineer, Wayne Proctor, at various times.

Council member Goldstein disclosed that he has used the engineer, Wayne Proctor, in the past; however, has no current business dealings with him.

Development Services Director Brian Binzer presented information regarding the variance request for property being known as 2265 Kingston Court. Mr. Binzer mentioned that this matter was tabled from last month and summarized the criteria for which variance requests should be considered.

Roy Mertz, representing the applicant, spoke regarding the location of the free standing signs on the property and the elimination of several of them. Mr. Mertz agreed to have the specified signs removed within 60 days. The remaining signs would be cleaned up within 90 days.

Discussion was held regarding a variance to allow an off premise sign since the parcel has not yet been split into two parcels. There was a general consensus to table this matter until the parcels could be split, which would eliminate the need for the variance allowing an off premise sign.

A motion was made to table this matter, with the understanding that the pending court action regarding a code violation would be held in abeyance until after the Council decision.

The motion was made by Council member King, seconded by Council member Goldstein, that this matter be Tabled. The motion carried by the following vote:

Vote: 6 - 0 - 0

Tabled

Absent for the vote: Johnny Sinclair

- * **20120142** **V2012-12 Michael McDonald - Pavilion Development 2195 Cobb Parkway South**
- V2012-12 [VARIANCE] MICHAEL MCDONALD (PAVILION DEVELOPMENT) request variance for property located in Land Lot 08050, District 17, Parcel 0160 and being known as 2195 Cobb Parkway South. Variance to allow a general advertising sign outside of the area within 100 feet of the right of way of Interstate 75.; Variance to waive the requirement that a general advertising sign be regulated as a principal use; Variance to allow a general advertising sign to be located within 1,000 foot radius of another general advertising sign; Variance to reduce the side setback for a general advertising sign support structure from 15' to 11'; Variance to reduce the side setback for a general advertising sign face from 11.25' to 7'.; Variance to reduce the front setback for a general advertising sign face from 30' to 17'; Variance to allow a general advertising sign be located on a lot upon which a building and signage is located; Variance to allow a general advertising sign be located closer to a permanent structure than the distance that is equal to the height of the sign. Ward 1.

This Matter was Approved to Table on the Consent Agenda.

Vote: 7 - 0 – 0 Approved to Tabled

- * **20120264** **BLW Actions of the April 9, 2012**

Review and approval of the April 9, 2012 actions and minutes of the Marietta Board of Lights and Water.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

UNSCHEDULED APPEARANCES:

ADJOURNMENT:

The meeting was adjourned at 9:36 p.m.

Date Approved: May 9, 2012

R. Steve Tumlin, Mayor

Attest: _____
Stephanie Guy, City Clerk